

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

JEANNA COLE,

Plaintiff,

vs.

ERIC HOLDER, UNITED STATES
ATTORNEY GENERAL, et al.,

Defendants.

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Case No. 10-0256-CV-W-ODS

ORDER AND OPINION DENYING
DEFENDANTS' REQUEST TO DISMISS COUNT I

On June 30, 2011, the Court denied Defendants' Motion for Summary Judgment and directed additional briefing on Defendants' contention that the Court lacked jurisdiction over Count I. The Court now denies Defendants' suggestion that jurisdiction is lacking.

Count I asserts an Equal Pay Act claim and relies on the Little Tucker Act for this Court's jurisdiction. As noted in the Court's September 22, 2010, Order, the Court's Jurisdiction over Count I depends on the amount sought by Plaintiff. The Court deferred consideration of Defendants' motion to dismiss Count I until the Record could be developed further. Defendants re-asserted the issue, contending only the Court of Claims has jurisdiction. Plaintiff responds by pointing out that she has limited her recovery to no more than \$10,000 on Count I, so even if the jury awards more than that amount her recovery will not exceed that specified in the Little Tucker Act. Numerous cases hold that a limitation of this sort will preserve jurisdiction under the Little Tucker Act, and Defendants offer no reason not to follow those cases. E.g., Smith v. Orr, 855 F.2d 1544, 1552-53 (Fed. Cir. 1988); Professional Managers' Ass'n v. United States, 761 F.2d 740 (D.C. Cir. 1985); Johnson v. United States, 208 F.R.D. 148, 158 (W.D. Tex. 2001).¹

¹Defendants contend they will be prejudiced if the Equal Pay Act claim is allowed to proceed in the absence of proper jurisdiction. This argument is a *non sequitur*,

IT IS SO ORDERED.

DATE: August 22, 2011

/s/ Ortrie D. Smith
ORTRIE D. SMITH, SENIOR JUDGE
UNITED STATES DISTRICT COURT

because prejudice is not a factor to be considered in determining whether jurisdiction exists: if jurisdiction is lacking, the claim should be dismissed regardless of prejudice, and if jurisdiction is present then the claim cannot be dismissed. To the extent Defendants contend the erroneous submission of the Equal Pay Act Claim will prejudice them with respect to the Title VII claim, the Court disagrees: the Court does not believe there will be any evidence admitted with respect to the Equal Pay Act claim that will not also be admissible with respect to the Title VII claim.